

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF RHODE ISLAND**

**IN RE: NEWPORT CREAMERY, INC.**

**BK No: 01- 13196**  
**CHAPTER 7**

Andrew Richardson, Trustee of the Newport Creamery, Inc. :  
Plaintiff :

Vs. **A.P. No. 01-1118**

Robert E. Swain,  
Rocomi Enterprises, LLC  
Newport Creamery, L.P.;  
NewBerg, L.P.  
NewHart, L.P., and  
Tarpon Highlands Development Corporation,  
Defendants

Rocomi Enterprises, LLC, Newport Creamery, LP,  
And Robert E. Swain, Third Party Plaintiffs

Vs Peter Rector, et al Third Party Defendants

**DEFENDANTS' THIRD PARTY COMPLAINT AGAINST THE RECTOR  
STOCKHOLDERS, RECTOR BOARD OF DIRECTORS, FOR  
INDEMNIFICATION.**

1. The Plaintiffs, for the purposes of this Third Party complaint, pursuant to Rule 7014 of the Bankruptcy Rules, are the named Defendants to the Trustee's Andrew Richardson claims for alleged fraudulent conveyances and breach of fiduciary duties as related to the actions of Newport Creamery, Inc. in March of 1999, as set forth in the above adversary proceeding, **A.P. No. 01-1118**. . Those Plaintiffs are Newport Creamery, LP, Rocomi Enterprises, LLC, and Robert E. Swain.
2. The Defendants to this Third Party complaint, pursuant to Rule 7014, are the former members of the Newport Creamery, Inc.'s, hereinafter "NCI", Board of

Directors, named hereinafter, who approved the removal of funds from NCI, and the former stockholders of NCI, named hereinafter, who received the funds of the Corporation, the loss of which the Trustee, Andrew Richardson has complained as being one of the causes of NCI's insolvency in 2001.

3. Plaintiffs' averments in their answers to the complaint of the Trustee, Andrew Richardson, and the Plaintiff's averments in their counterclaims, in the adversary proceeding, **A.P. No. 01-1118**, are hereby incorporated by reference within this Third party complaint.

4. On March 10, 1999, the members of the Board of Directors of Newport Creamery, Inc, Peter W. Rector, Elizabeth M. Meyers, Robert W. Radway, and Peter S. Damon approved two resolutions: to wit,

RESOLVED: That the Corporation is hereby authorized to sell and transfer six (6) parcels of real estate owned by the corporation located at in Rhode Island at 208 West Main Road in Middletown, Smith Street in Providence, Tiogue Avenue in Coventry, Greenville Avenue in Smithfield and West Shore Road in Warwick, and in Massachusetts at Fall River Avenue in Seekonk, to Newport Creamery, LP a Delaware limited partnership, for a purchase price Of approximately Four Million Seven Hundred Thousand Dollars (\$4,700,000); and

RESOLVED: That the Corporation is hereby authorized to effect a redemption of all if the issued and outstanding Common stock of the Corporation from the shareholders Of the Corporation for an aggregate purchase price per share of \$7,310.64 per share, less costs and expenses associated with the transaction

5. On or about March 12, 1999, Newport Creamery, LP purchased several pieces of real estate from Newport Creamery, Inc. for \$4,700,000 and also

advanced Newport Creamery, Inc. loan proceeds in the amount of \$250,000 on equipment pledges at three locations.

6. In this third party complaint, the members of Defendant NCI Board of directors are Peter W. Rector, Elizabeth M. Meyers, Robert W. Radway, and Peter S. Damon, individually, jointly, and severally, hereinafter referred to as the Defendant Rector Board.
7. In this third party complaint, the Defendant NCI stockholders, who are being sued individually, jointly, and severally, and, hereinafter are referred to as the "Rector stockholders", are the following persons and entities:

NAME:	SHARES:
Mason D. Rector-Family Trust C/O Elizabeth M. Myers, Esq. 1500 Fleet Center Providence, RI 02903	491
Peter W. Rector 101 Harrison Avenue Newport, RI 02840	351
Trust U/W Daisy Palmer F/B/O Gene Palmer et al C/O US Trust Co. of New York 114 West 47 <sup>th</sup> Street New York, NY 10036	25
Fred and/or Helen Patykewich 36 Portsmouth Avenue Staten Island, NY 10301	15
Lynn Summers 8 Glenview Knoll Iowa City, Iowa 52240	11
Anne H. Lawton 54 Jar Brook Road Halliston, MA 01746	11

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Estate of John E. McGoff C/o Barry McGoff 698 Black Point Lane Portsmouth, RI 02871	10
Francis G. Dwyer 513 Paradise Avenue Middletown, RI 02842	1
William H. Jensen 170 West 75 <sup>th</sup> Street Apt. 4S New York, NY 10023	4
C. Weber Jensen 170 West 109 <sup>th</sup> Street Apt. 5W New York, NY 10025	3
Revocable Inter Vivos Trust Of Charles A. Hambly 53 Ayrault Street Newport, RI 02840	70
Harriet D. Reed C/o US Trust Co. of Florida 132 Royal Palm Way Palm Beach, FL 33480	25
David M. Rector 40205 Ladene Lane Novi, MI 48375	4
Paul D. Rector 514 East 88 <sup>th</sup> St/ #3B New York, NY 10128	3
William R. Harvey 194 Third Beach Road Middletown, RI 02842	10
Robert W. Radway And Gloria Radway as Joint Tenants 14 Drown Parkway Rumford, RI 02916	1

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Peter S. Damon 280 Indian Avenue Middletown, RI 02842	1
Owen P. Reid, Jr. 5177 Diamond Heights Blvd. San Francisco, CA 94131	2
Eleanor Kelly 18547 Shawnee Drive Spring Lake, MI 49456	2
John T. Reid 362 Benefit Street Providence, RI 02903	2
Joachim A. Weissfeld 50 Clarke Road Barrington, RI 02806	1
<b>Preferred Stock</b>	
Peter W. Rector	15
Judith C. Rector	29

8. On March 12, 1999, the Newport Creamery, Inc. redeemed all of its 1,043 issued and outstanding shares by paying to the Defendant Rector shareholders the sum of \$7,625,000. The sources of funds, used by NCI to pay for the redemption price to the Defendants , were created by the following transactions of NCI:

-Net proceeds from sale of real estate to NCLP and loan on equipment:	\$4,765,764;
-Net proceeds from fixtures and equipment financing:	\$1,428,785;
-Assignment of cash surrender value of key person policies	\$ 938,169;
-Capital Contributed by Rocomi Enterprises, LLC	\$248,000;
-Loan from Peter Rector	\$225,000
- Cash from Newport Creamery, Inc.	<u>\$19,242</u>
Total Redemption Payments:	\$7,625,000

9. The Trustee, Andrew Richardson, complained in the above entitled matter, that the removal of \$7,625,000 in assets from the Newport Creamery, Inc., which occurred by vote of the former Board of Directors to redeem the stock of the former stockholders, Defendants hereto, left insufficient working capital in the Corporation to pay future creditors, apparently, pursuant to the provisions of R.I.G.L. §6-16-4; and thus, asked that such money be restored by Rocomi Enterprises, LLC, Newport Creamery, LP, and Robert E. Swain to NCI as damages. The Trustee further requests that Newport Creamery, LP reconvey, without consideration, the property, which Newport Creamery, Inc had conveyed to Newport Creamery, LP in March of 1999 for \$4,700,00.
10. On March 12, 1999, without consideration, Newport Creamery, Inc., Robert E. Swain, and Newport Creamery then released the Rector Board and Rector stockholders from any liability arising in connection with the sale of real estate by Newport Creamery, Inc to Newport Creamery, LP. Such release, however, was against public policy, null and void, and had no effect as to the claims brought by the Trustee, Andrew Richardson, in his derivative capacity, against the Plaintiffs hereto.
11. If the Trustee's allegations are found to be true, it would have been the wrongful removal and conversion of the assets of Newport Creamery, Inc by the Rector stockholders, as being wrongfully authorized by the Rector Board of Directors, which actually caused Newport Creamery, Inc. to have insufficient operating capital to pay future unsecured creditors, and, not any

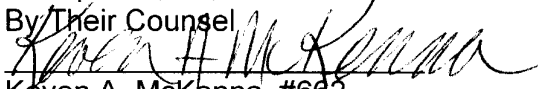
action of Newport Creamery, LP, Robert E. Swain, or Rocomi Enterprises, LLC.

12. To the extent that the Trustee, Andrew Richardson, obtains any such relief against Rocomi Enterprises, LLC, Newport Creamery, LP, and/or Robert E. Swain, then Rocomi Enterprises, LLC, Newport Creamery, LP, and Robert E. Swain demand that the Rector defendants reimburse and indemnify Rocomi Enterprises, LLC, Newport Creamery, LP, and Robert E. Swain for the amount of any judgments with interest, attorney fees and costs entered against them on the demand of the Trustee. The Rector Board and the Rector Stockholders are liable to Rocomi Enterprises, Newport Creamery, LP, and Robert E. Swain for any judgment against the Plaintiffs here obtained by the Trustee for fraudulent conveyances or violations of fiduciary duties.
13. Such judgments against Rocomi Enterprises, Newport Creamery, LP, and Robert E. Swain would cause an unjust enrichment of NCI and the of the Rector stockholders, who were the actual beneficiaries of the alleged illegal action of which the Trustee complains. The Rector Board's \$7,625,000 stock redemption removed the cash from NCI, not any acts of Rocomi Enterprises, Newport Creamery, LP, and Robert E. Swain, which brought cash into the corporation.

**Wherefore**, Rocomi Enterprises, LLC, Newport Creamery, LP, and Robert E. Swain pray judgment be entered against the Defendants hereto individually, jointly, and severally as follows:

- (i) Declare that the release signed on or about March 12, 1999 by Newport Creamery, Inc; by Newport Creamery, LP, and Robert E. Swain, is void;
- (ii) Declare that the sums of money which may be adjudged to be the liability of Newport Creamery, LP, Robert E. Swain, and Rocomi Enterprises, LLC, also be then the liability of the Defendant Rector Board and Rector Stockholders, jointly, severally, and individually, to the Plaintiffs hereto, to wit, Newport Creamery, LP, Robert E. Swain, and Rocomi Enterprises, LLC;
- (iii) Order the Defendants hereto to indemnify and to hold harmless the Plaintiffs hereto for such judgments suffered by the Plaintiffs as a consequence of the Defendants acts herein;
- (iv) Provide for such other relief, which is just and equitable.

Newport Creamery, LP, Rocomi  
Enterprises, LP, and Robert E. Swain  
By Their Counsel

  
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**Newport Creamery, LP, Rocomi Enterprises, LP, and Robert E. Swain,  
demand trial by jury.**

October 29, 2001